

CHARLES RENFRO

IBLA 85-546

Decided April 2, 1987

Appeal from a decision of the Anchorage District Office, Bureau of Land Management, rejecting mining claim recordation (AA-31983), declaring the mining claim null and void, and rejecting mineral survey application (AA-12535, M.S. 2337).

Affirmed in part; affirmed as modified in part; reversed in part.

1. Alaska: Land Grants and Selections -- Alaska: Mining Claims --
Alaska National Interest Lands Conservation Act: Generally

Under subsection 906(c)(1) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1635(c)(1) (1982), when land has been tentatively approved for transfer to the State of Alaska, legal title has been conveyed and the Department no longer possesses jurisdiction over the land and has no authority to affect title to it. This rule applies to land on which mining claims have been located when no exception for a mining claim has been made in the decision granting tentative approval.

APPEARANCES: Charles Renfro, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Charles Renfro has appealed a decision of the Anchorage District Office, Bureau of Land Management (BLM), dated April 2, 1985, rejecting the mining claim recordation for the Glacier View Claim (AA-31983), declaring the lode claim null and void ab initio, and rejecting a mineral survey application for the claim (AA-12535). The reason stated by BLM for its decision was that the claim had been located in protracted T. 22 S., R. 12 W., Fairbanks Meridian, Alaska, on land that had been segregated by selection by the State of Alaska on August 11, 1965 (A-063044). In his statement of reasons appellant points out that the area has not been surveyed and states: "It is our belief that this claim does lie within the next township to the west and if so would not have been affected by a prior selection by the state or other parties."

The case file forwarded by BLM contains a copy of the location certificate for the Glacier View Claim showing that it was posted September 2, 1970, and recorded with the Talkeetna recording district November 27, 1970. The location certificate states that the claim is between Eldridge Glacier and Partin Creek. A sketch on the location certificate shows the claim to be between these geographic features and also shows the northeast corner of the claim to be 700 feet from a survey marker. The claim was filed with BLM on October 12, 1979, along with location certificates for the Sorefoot Nos. 1 through 28 lode claims.

By order dated June 22, 1984, BLM required the claim owners to file a description of the 29 claims pursuant to 43 CFR 3833.1-2(b)(5)(i). The name of one claim was omitted from the list of claims accompanying the order, and the omission was corrected by supplemental order dated June 27, 1984. A copy of the list of claims was returned to BLM with handwritten notes showing quarter sections. The notes list the Glacier View Claim as being in the NW 1/4 and SW 1/4 of sec. 30, T. 22 S., R. 12 W., Fairbanks Meridian, Alaska. A U.S. Geological Survey map submitted with the list shows the Glacier View Claim to be within the same quarter sections.

The claim file also contains a copy of a letter from the State of Alaska dated July 14, 1965, received by BLM August 11, 1965, selecting under section 6(b) of the Alaska Statehood Act, 72 Stat. 339 (1958), T. 22 S., R. 12 W., Fairbanks Meridian, Alaska. By decision dated May 9, 1966, tentative approval was given the selection (Anchorage 063044).

In addition to the claim file, BLM forwarded to the Board the file for the mineral survey application for the Glacier View Claim. Appellant's mineral survey application was received by BLM December 17, 1976. The application lists the claim as being in an unknown section of T. 22 S., R. "12 and/or 13 West," Fairbanks Meridian, Alaska. A mineral survey order was issued June 3, 1977 (Mineral Survey 2337). Nothing in the file indicates that the survey has been performed.

At the outset the issue presented by this appeal would appear to be whether, under the standard established in Arley Taylor, 90 IBLA 313 (1986), the information submitted by the appellant was sufficiently accurate to permit BLM to find that the position of the Glacier View Claim on the ground was within T. 22 S., R. 12 W., Fairbanks Meridian, Alaska. See also Outline Oil Co., 95 IBLA 255 (1987); Leslie Corriea, 93 IBLA 346 (19986). The facts of appellant's case bear some similarity to those in Taylor. The Glacier View Claim was located on unsurveyed ground and was described in its location notice in relation to geographic features. While a map submitted by appellant shows the approximate position of the claim, the map is not drawn to scale, and suggests the claim occupies over 60 acres, more than three times its actual size. Notes on a list of claims returned by appellant to BLM in response to a request for information indicate that the Glacier View claim is in section 30 of R. 12 W.; however, it is unclear whether this conclusion was based on a factual determination as to the position of the claim in

relation to corners or lines of the public land survey, or whether it results from an estimate based on the topographical features of the map. Nor does the file contain any information about the survey marker shown on the location certificate, which marker, if official, would likely resolve the issue as to the position of the claim.

[1] Further examination of the case file reveals that the Board need not decide upon the reliability of the information submitted to BLM by appellant because our decision of this question can be of no consequence. Whether the Glacier View Claim was located in T. 22 S., R. 12 W., or across the township line in R. 13 W., the land is no longer under the jurisdiction of the Department of the Interior. State of Alaska v. Thorson (On Reconsideration), 83 IBLA 237, 244, 249, 253, 91 I.D. 331, 335, 338, 340 (1984), held that subsection 906(c)(1) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1635(c)(1) (1982), constituted "an immediate legislative conveyance of all previously TA'd lands," so that legal title is conveyed "the same as the effect of a conveyance by patent," and "the Department no longer possesses jurisdiction over such lands and has no authority on its own to affect title thereto." See also Terry L. Wilson, 85 IBLA 206, 215, 92 I.D. 109, 114-15 (1985). This holding applies to land on which mining claims have been located when no exception for the claims is made in the decision granting tentative approval. William J. Smith, 94 IBLA 75 (1986); Elizabeth S. Hjellen, 93 IBLA 203 (1986); Ed Bilderback, 89 IBLA 263 (1985).

As stated above, T. 22 S., R. 12 W., Fairbanks Meridian, Alaska, was selected by the State of Alaska in 1965 and its selection was tentatively approved in 1966. Under 43 CFR 2627.4(b) lands selected by the State of Alaska are segregated from location under the mining laws. A mining claim located on land segregated by the regulation is null and void. Rodney D. Jackson, 92 IBLA 87 (1986); Perlia J. Strassburg, 92 IBLA 1 (1986); Fred Thompson, 74 IBLA 231 (1983). Thus, if BLM is correct that the Glacier View Claim was located within R. 12 W., it is beyond dispute that the claim was null and void from the outset. However, the Department no longer has jurisdiction over the land and therefore can make no determination as to the claim's validity. See Ed Bilderback, *supra*.

If appellant is correct that the Glacier View Claim lies in T. 22 S., R. 13 W., Fairbanks Meridian, Alaska, the Department likewise no longer has jurisdiction over the land. In addition to the documents previously described, the mining claim file contains a copy of a BLM decision dated September 14, 1984, giving tentative approval of the State of Alaska's selection of lands within T. 22 S., R. 13 W., Fairbanks Meridian, Alaska. The decision states in part:

The following described unsurveyed lands, which are considered proper for acquisition by the State, are hereby tentatively approved:

T. 22 S., R. 13 W., Fairbanks Meridian, Alaska

Secs. 1, 2, and 3 (all);
 Secs. 10 to 15, inclusive (all);
 Secs. 22 to 27, inclusive (all); and
 Secs. 34, 35, and 36 (all);

Excluding lands within the Denali National Park and Preserve,
 Mineral Survey application AA-12534 (Mineral Survey No. 2336)
 which includes mining claim recordations AA-31955 through
 AA-31982, and mining claim recordations AA-35182, AA-35183, and
 AA-35198 through AA-35201, which appear to be located in Secs. 1, 11 through
 14, and 23.

The Sorefoot Nos. 1 through 28 are filed with BLM as AA-31955 through AA-31982 and are expressly excluded from the tentative approval of the township. The Glacier View Claim, however, is not so excluded. Thus, if appellant is correct that the claim lies within R. 13 W., the Department no longer has jurisdiction over the land and can make no determination as to the claim's validity.

Based on the analysis presented above, we affirm BLM's rejection of the mining claim recordation for the Glacier View Claim on the alternative ground that the claim cannot now pertain to any land within the jurisdiction of the Department of the Interior. To the extent that section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), required the claim to be filed with BLM and thereafter maintained by annual filings, it is apparent from the case file that these requirements were met. Because the land on which the claim was located is no longer part of the public lands, the filing requirement no longer applies. *Ed Bilderback, supra*. See also Add-Ventures, Ltd., 95 IBLA 44, 50 (1986).

Our analysis also requires us to reverse BLM's declaration that the Glacier View Claim is null and void. The Department no longer has authority to affect title to the land at issue, may not adjudicate the validity of the claim, and may not declare it void. As a consequence, appellant must seek from the State of Alaska recognition of any rights arising from the location of the claim.

For the same reason, BLM's rejection of appellant's mineral survey application is affirmed. When a mineral survey is required, it is a necessary step toward applying for a patent, and the plat of survey must be posted on the claim in giving notice of the patent application. 30 U.S.C. § 29 (1982); 43 CFR 3861.7-1. Upon approval, a mineral survey becomes part of the public land survey. Because the Glacier View Claim cannot now be on public land, at present there is no need for a survey which is performed by a mineral surveyor appointed by the Cadastral Survey and reviewed and approved by the cadastral surveyor. Appellants' mineral survey application may therefore properly be rejected and his deposit refunded as appropriate.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, affirmed as modified in part, and reversed in part.

Franklin D. Arness

Administrative Judge

We concur:

James L. Burski

Administrative Judge

Bruce R. Harris

Administrative Judge.

